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E-Filed on: November 24, 2014

Attorneys for Debtor Steven T. Gregory

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

STEVEN TAYLOR GREGORY,

Debtor.

Case No: BK-S-10-20779-LED

Chapter 7

Date of Hearing: JANUARY 6, 2015

Time of Hearing: 2:30 P.M.

**DEBTOR'S MOTION TO REOPEN BANKRUPTCY CASE FOR THE LIMITED
PURPOSE OF DECLARING JUDICIAL LIEN(S) VOID AND TO HOLD THE
GILBERT FAMILY TRUST IN CONTEMPT**

Debtor STEVEN TAYLOR GREGORY ("**Debtor**"), by and through his undersigned counsel of the law firm LEACH JOHNSON SONG & GRUCHOW, hereby requests this Court to reopen Debtor's bankruptcy case for the limited purpose of setting aside certain judicial lien(s) recorded by the Gilbert Family Trust.

This Motion is based upon the papers and pleadings filed herein, including the Memorandum of Points and Authorities attached hereto, together with such other and further evidence and argument as may be presented and considered by this Court at any hearing on this Motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

RELEVANT FACTS

1. On or about February 3, 2010, the Gilbert Family Trust recorded a certified copy of a Default Judgment obtained in the Eighth Judicial District Court Case – Clark County, Nevada – Case No. A-09-591803-C (the “**District Court Case**”), and recorded in Book No. 20100203, as Instrument No. 0003008 of the Official Records of the Clark County Recorder (the “**2/3/10 Judgment**”). See Exhibit “A” attached hereto.

2. On or about June 10, 2010, Debtor filed a Voluntary Petition, seeking relief under Chapter 7 of Title 11, United State Code (the “**Code**”). See [Docket No. 1].

3. On or about July 13, 2010, the Gilbert Family Trust also recorded a copy of an Order and Judgment obtained in the District Court Case and recorded in Book No. 20100713, as Instrument No. 0004475 of the Official Records of the Clark County Recorder (the “**7/13/10 Order**”). See Exhibit “B” attached hereto.

4. On or about September 15, 2010, Debtor received a Discharge under section 727 of the Code (the “**Discharge**”).

II.

RELEVANT LAW

11 U.S.C. § 541(a), in pertinent part, states that the commencement of a case under Title 11 creates an estate comprised of all legal or equitable interests of the debtor in property as of the commencement of the case, including all “interests of the debtor and the debtor’s spouse in community property as of the commencement of the case.” See 11 U.S.C. § 541(a)(1), (2). Furthermore, pursuant to 11 U.S.C. § 362(a), filing a petition under Title 11, operates as a stay of any act, applicable to all entities from:

- (1) the commencement **or continuation**, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

- (2) the enforcement, **against the debtor or against property of the estate**, of a judgment obtained before the commencement of the case under this title;

See 11 U.S.C. § 362(a)(1), (2) (emphasis added). Finally, pursuant to 11 U.S.C. § 524(a), a discharge under Title 11:

A discharge in a case under this title

- (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;
- (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived . . .

See 11 U.S.C. § 362(a)(1), (2). Accordingly, a judicial action taken prior to the filing of a voluntary petition may not be completed while a debtor is protected by the automatic stay. Furthermore, where community property is property of the estate, any continuation of an act, or any act taken to perfect a lien against such community property is done in violation of the automatic stay. Finally, a discharge under Title 11 voids any judgment as to the personal liability of the Debtor and acts as a permanent injunction against continuation or commencement of any act to collect the pre-petition debtor from the Debtor.

III.

ARGUMENT

A. The Court Should Set Aside the 2/3/10 Judgment.

Here, the Debtor executed a promissory note in favor of the Gilbert Family Trust (“**Gilbert**”). As outlined above, Gilbert obtained a judgment against Debtor, who then sought protection under Chapter 7 of the Code. Gilbert properly recorded the 2/3/10 Judgment before Debtor filed a voluntary petition. But, due to Debtor’s Discharge, Section 524(a) enjoins continued or renewed efforts to collect the 2/3/10 Judgment. This is so because the only property remaining in the estate following Discharge is exempt property. As such, the 2/3/10 Judgment is useless. Yet, Debtor cannot force Gilbert to release the 2/3/10 Judgment.

1 Therefore, Debtor respectfully requests this Court reopen this matter for the limited purpose of
2 setting aside the 2/3/10 Judgment.

3 **B. The Court Should Declare the 7/13/10 Order Null and Void.**

4 11 U.S.C. 362(a)(1) provides that any effort to perfect a lien against a debtor or the
5 bankruptcy estate is null and void. 11 U.S.C. 541(a) includes community property within the
6 bankruptcy estate. Therefore, an act to perfect a lien against community property which is
7 property of the bankruptcy estate is null and void.

8 After Debtor filed a voluntary petition, Gilbert recorded the 7/13/10 Order, ostensibly
9 against Debtor's former spouse. Review of the 7/13/10 Order, however, reveals it was actually
10 the impermissible continuation to collect this debt or perfect a lien in violation of the automatic
11 stay. The 7/13/10 Order states it is a judgment against Diane L. Gregory, through the indemnity
12 agreement executed by Debtor. See Exhibit "B" - 7/13/10 Order, 2:21-24. The Order also
13 states that it is against Diane L. Gregory through "a community obligation incurred during the
14 marital community of Diane L. Gregory and Steven T. Gregory." Id. Additionally, the Order
15 declares it attaches to "that property held by Steven T. Gregory and Diane L. Gregory as husband
16 and wife, tenants in common, located at 6787 Gold Nugget Drive, located in Las Vegas, Nevada,
17 [as] a community asset and the proceeds from that property presently held by Nevada Title
18 Company." See Id. at 2:26-28 – 3:1-2. Finally, the Order finds, "that the community assets of
19 Steven T. Gregory and Diane L. Gregory are liable upon The Gilbert Family Trust's judgment as
20 entered herein." See Id. at 3:3-6.

21 When the 7/13/10 Order was signed, filed, and recorded (perfected), the Debtor and the
22 bankruptcy estate were protected by the automatic stay. Yet, based on its language, it is clear the
23 7/13/10 Order was entered and recorded in order to obtain and perfect a lien against both the
24 Debtor and the Debtor's interest in community property, which is property of the bankruptcy
25 estate. Given the above, the 7/13/10 Order was obtained in violation of the automatic stay and is
26 therefore, null and void. As such, Debtor respectfully requests this Court declare the 7/13/10
27 Order null and void.

28 . . .

IV.

CONCLUSION

The 2/3/10 Judgment is ineffective against the Debtor, yet prohibits a fresh start. The 7/13/10 Order is null and void. However, in the alternative, the county recorder indexed the 7/13/10 Order such that it impairs the Debtor similarly as the 2/3/10 Judgment by preventing a fresh start. The Judgments can only be collected personally against Debtor or by attempting to attach to exempt property. Therefore, this Court should reopen the case and set aside or declare these Judgments null and void.

DATED this 24th day of November, 2014.

LEACH JOHNSON SONG & GRUCHOW

By: /s/ MICHAEL W. MCKELLEB, ESQ.

KIRBY C. GRUCHOW, JR., ESQ.

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Counsel for Debtor Steven T. Gregory

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EXHIBIT “A”

EXHIBIT “A”

APN# N/A

3

Inst #: 201002030003008

Fees: \$16.00

N/C Fee: \$0.00

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Receipt #: 219532

Requestor:

LIONEL SAWYER ET AL

Recorded By: GILKS Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Recording requested by:

Todd M. Touton

Return to:

Name Lionel Sawyer & Collins

Address 300 South Fourth Street, #1700

City/State/Zip Las Vegas, Nevada 89101

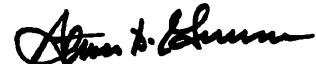
DEFAULT JUDGMENT

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This page added to provide additional information required by NRS 111.312 Sections 1-2

(Additional recording fee applies).

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CLERK OF THE COURT

JDDF

Todd M. Touton, #1744

LIONEL SAWYER & COLLINS

1700 Bank of America Plaza

300 South Fourth Street

Las Vegas, NV 89101

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Attorneys for Plaintiff **THE GILBERT FAMILY TRUST AS
REINSTATED DECEMBER 10, 2002, DONALD F.
GILBERT, JR., TRUSTEE****DISTRICT COURT****CLARK COUNTY, NEVADA****THE GILBERT FAMILY TRUST AS
REINSTATED DECEMBER 10, 2002, DONALD
F. GILBERT, JR., TRUSTEE,**

Plaintiff,

v.

STEVEN T. GREGORY,

Defendant.

CASE NO.: A-09-591803-C

DEPT NO.: XVI

DEFAULT JUDGMENT

This Court having considered the Application for Default Judgment of plaintiff The Gilbert Family Trust As Reinstated December 10, 2002, Donald F. Gilbert, Jr., Trustee against Steven T. Gregory and this Court having entered a Default on December 8, 2009, and good cause appearing therefore:

NOW THEREFORE, judgment is hereby entered in favor of plaintiff The Gilbert Family Trust As Reinstated December 10, 2002, Donald F. Gilbert, Jr., Trustee and against Steven T. Gregory in the principal amount of \$1,630,000.00, unpaid interest in the amount of \$1.65 together with pre-judgment interest in the amount of \$422,894.44 as of February 2, 2010, accrued late fees

1 \$6,520.00, late charges in the amount of \$61,125.00, Transaction Fee \$11.00, Close Out Fee 100.00,
2 Statement Fee \$120.00, fees of Goldwater Capital Nevada, LLC in the amount of \$9,400.00 and
3 legal fees of Plaintiff in the amount of \$1,500.00 for a total judgment of \$2,131,673.08, plus costs of
4 \$707.80, plus interest hereafter on all amounts at the contract default rate of 20 percent (20%) per
5 until paid in full.

6
7 DATED this 2nd day of February, 2010

8
9 
10 DISTRICT COURT JUDGE

11 Submitted by:

12 LIONEL SAWYER & COLLINS

13
14
15 By: 

16 Todd M. Toulson, #1744
17 1700 Bank of America Plaza
18 300 South Fourth Street
19 Las Vegas, Nevada 89101

20 Attorneys for Plaintiff THE GILBERT FAMILY TRUST AS
21 REINSTATED DECEMBER 10, 2002, DONALD F.
22 GILBERT, JR., TRUSTEE
23
24
25
26
27
28

EXHIBIT “B”

EXHIBIT “B”

APN# N/A

5

Inst #: 201007130004475

Fees: \$18.00

N/C Fee: \$0.00

07/13/2010 03:47:44 PM

Receipt #: 424225

Requestor:

TODD M TOUTON

Recorded By: AEA Pgs: 5

DEBBIE CONWAY

CLARK COUNTY RECORDER

Recording requested by:

Todd M. Touton

Return to:

Name Lionel Sawyer & Collins

Address 300 South Fourth Street, #1700

City/State/Zip Las Vegas, Nevada 89101

ORDER AND JUDGMENT

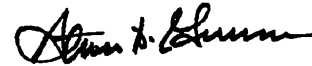
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QUALITY OF ORIGINAL DOCUMENT

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CLERK OF THE COURT

ORDER

Todd M. Touton, #1744
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Attorneys for Plaintiff **THE GILBERT FAMILY TRUST AS**
REINSTATED DECEMBER 10, 2002, DONALD F.
GILBERT, JR., TRUSTEE

DISTRICT COURT**CLARK COUNTY, NEVADA**

THE GILBERT FAMILY TRUST AS
REINSTATED DECEMBER 10, 2002, DONALD
F. GILBERT, JR., TRUSTEE,

Plaintiff,

v.

STEVEN T. GREGORY,

Defendant.

CASE NO.: A-09-591803-C
DEPT NO.: XVI

ORDER AND JUDGMENT

THE GILBERT FAMILY TRUST AS
REINSTATED DECEMBER 10, 2002, DONALD
F. GILBERT, JR., TRUSTEE,

Plaintiff;

v.

Diane E. Gregory,

Defendant.

STAN IVAN COKER and MARLANE COKER, as
trustees of G&D FAMILY TRUST, STAN IVAN
COKER, MARLANE COKER, and AUGUSTUS
COKER as trustees of the COKER EQUIPMENT,
INC. DEFINED BENEFIT PENSION PLAN,

Plaintiffs in Intervention,

v.

LIONEL SAWYER
& COLLINS
ATTORNEYS AT LAW
 1700 BANK OF AMERICA PLAZA
 300 SOUTH FOURTH ST.
 LAS VEGAS,
 NEVADA 89101
 (702) 383-8888

07-07-10 13:09 RCVD

1 STEVEN T. GREGORY and DIANE L.
 2 GREGORY; THE GILBERT FAMILY TRUST AS
 3 REINSTATED DECEMBER 10, 2002, DONALD
 4 F. GILBERT, JR., TRUSTEE, and DOES I through
 X, and ROE CORPORATIONS I through X,
 inclusive,

5 Defendants in Intervention.

6
 7 WHEREAS, The Gilbert Family Trust As Reinstated December 10, 2002, Donald F. Gilbert,
 8 Trustee ("The Gilbert Family Trust") pursued its Ex Parte Motion With Notice For Summons
 9 And Order To Show Cause And Determination Why Diane L. Gregory Should Not Be Bound To
 10 That Certain Judgment By Default Entered in Favor Of The Gilbert Family Trust As Reinstated
 11 December 10, 2002, Donald F. Gilbert Trustee, by argument on March 18, 2010, and further
 12 argument after an evidentiary hearing of the matter calendared for May 14, 2010, the Court
 13 having heard arguments of counsel and after reviewing the Stipulated Exhibits and Affidavits
 14 submitted by the parties in support in their positions and good cause appearing therefore,
 15

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Judgment is hereby
 17 entered in favor of The Gilbert Family Trust As Reinstated December 10, 2002, Donald F.
 18 Gilbert, Trustee and against Diane L. Gregory in accordance with NRS 17.030, and following
 19 presentation of evidence by Diane L. Gregory, and good cause appearing therefore,
 20

21 THE COURT HEREBY FINDS that the obligation represented by that certain Indemnity
 22 Guaranty Agreement effective August 9, 2006, executed by Steven T. Gregory represents a
 23 community obligation incurred during the marital community of Diane L. Gregory and Steven T.
 24 Gregory.

25 THE COURT FURTHER FINDS that property held by Steven T. Gregory and Diane L.
 26 Gregory as husband and wife, tenants in common, located at 6787 Gold Nugget Drive, located in
 27 Las Vegas, Nevada, was a community asset and the proceeds from that property presently held by
 28

1 Nevada Title Company pursuant to this Court's Order dated February 24, 2010, were likewise
2 community assets.

3 THE COURT FURTHER FINDS that the community assets of Steven T. Gregory and Diane
4 L. Gregory are liable upon The Gilbert Family Trust's judgment as entered herein against Steven
5 L. Gregory February 2, 2010, and as further entered herein against Diane L. Gregory.

6 THE COURT FURTHER FINDS that Diane L. Gregory has failed to rebut the presumption
7 recognized in this Court's Order February 2, 2010, of the community nature of the above-
8 referenced community obligation and community asset. Further, Diane L. Gregory made no
9 showing that she held any separate property at the time the community obligation to the Gilbert
10 Family Trust arose.

11 JUDGMENT IS HEREBY ENTERED in favor The Gilbert Family Trust As Reinstated
12 December 10, 2002, Donald F. Gilbert, Trustee and against Diane L. Gregory in the principal
13 amount of \$1,630,000.00, unpaid interest in the amount of \$1.65 together with pre-judgment
14 interest in the amount of \$881,973.89 as of July 1, 2010, accrued late fees in the amount of
15 \$6,520.00, late charges in the amount of \$61,125.00, Transaction Fee \$11.00, Close Out Fee -
16 \$100.00, Statement Fee - \$120.00, fees of Goldwater Capital Nevada, LLC in the amount of
17 \$9,400.00 and legal fees of Plaintiff in the amount of \$1,500.00 for a total judgment of
18 \$2,590,751.54 plus interest hereafter on all amounts at the contract default rate of 20 percent
19 (20%) per annum until paid in full.
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1 This Judgment obligation is a joint responsibility with that entered against Steven L. Gregory
2 herein on February 2, 2010.

3 Dated this 7 day of ^{July}~~June~~, 2010.

4
5 
6 DISTRICT COURT JUDGE
7 *adid*
8 CASE NO. A591803

Submitted by:

9 LIONEL SAWYER & COLLINS

10
11 By: 

12 Todd M. Tauton, #1744
13 1700 Bank of America Plaza
14 300 South Fourth Street
15 Las Vegas, Nevada 89101

16 Attorneys for Plaintiff THE GILBERT FAMILY
17 TRUST AS REINSTATED DECEMBER 10, 2002,
18 DONALD F. GILBERT, JR., TRUSTEE
19
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CLERK OF THE COURT

JUL - 9 2010